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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,403	04/01/2004	Robin J. Guthrie	C-2480	9610

7590 03/23/2009
M. P. Williams
210 Main Street
Manchester, CT 06040

EXAMINER

WALKER, KEITH D

ART UNIT	PAPER NUMBER
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1795

MAIL DATE	DELIVERY MODE
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03/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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3/23/09

In re application of
Guthrie

Serial No. 10/816,403

Filed: April 1, 2004

For: Fuel Cell Reactant Flow Fields That Maximize Platform
Utilization

wk

DECISION ON
PETITION

This is a response to withdraw the abandonment of this application and is being considered as a PETITION UNDER RULE 37 C.F.R. 1.181(a) filed February 12, 2009. The petition requests that the abandonment, as set forth in the Notice of Abandonment mailed January 29, 2009, be withdrawn.

Petitioner asserts that an e-mail dated July 23, 2008 to SPE Ryan requesting a quality review of the final rejection was sent. Because of the SPE's extended absence, the e-mail was forwarded to SPE Tsang-Foster on August 18, 2008. SPE Tsang-Foster on August 20, 2008 in a phone call stated that the final rejection would be withdrawn. Petitioner on August 21, 2008 sent an e-mail to SPE Tsang-Foster confirming the phone call of August 20, 2008.

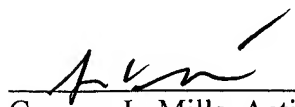
Petitioner now asserts that by sidestepping the requested review and offering instead a new office action, the status of the case shifted from a response due from applicant to an action due from the Office.

USPTO employees are NOT permitted to initiate communications with applicants via Internet e-mail unless there is a written authorization of record in the patent application by the applicant. (M.P.E.P. 502.03). A review of the file does not indicate a written authorization of record in the patent application or an interview summary of the phone conversation of August 20, 2008.

The application is abandoned since a final rejection was mailed out on 7/16/08. The finality of the Office action must be withdrawn while the application is still pending. This is purely a question of practice, wholly distinct from the tenability of the rejection. 37 CFR 1.135(a) specifies that an application becomes abandoned if applicant "fails to reply" to an office action within the fixed statutory period. This failure may result either from (A) failure to reply within the statutory period, or (B) insufficiency of reply, i.e., failure to file a "complete and proper reply, as the condition of the case may require" within the statutory period (37 CFR 1.135(b)). Applicant is advised that the abandonment of this application may only be overcome by filing a petition to revive under 37 CFR 1.137. A petition to revive may be appropriate if applicant's failure to reply was either unavoidable or unintentional.

DECISION

The Petition is **DISMISSED** as to the withdrawal of abandonment.


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